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Saudi Arabia

MERGER CONTROL

Contributor

GLA & Company



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This country-specific Q&A provides an overview of merger control laws and regulations applicable in Saudi Arabia.

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SAUDI ARABIA

MERGER CONTROL



1. Overview

The Saudi merger control regime is comprised of the Kingdom of Saudi Arabia (KSA) Competition Law issued by Royal Decree No (M75) of 1440H (the “**Competition Law**”), supplemented by the Executive Regulations issued by Resolution No 337 of 25/1/1441H (“**Regulations**”) with overall guidance from Merger Review Guidelines issued by the GAC on July 2021 (“**Guidelines**”). The KSA General Authority for Competition (GAC) enforces the competition regime in KSA.

The Competition Law uses a principle of economic concentration to identify merger control issues. An economic concentration is defined as any action that results in a total or partial transfer of ownership of assets, rights, equity, stocks, shares, or liabilities of a firm to another by way of merger, acquisition, takeover, or the joining of two or more managements in a joint management, or any other form that leads to the control of an entity, including influencing its decision, the organisation of its administrative structure, or its voting system. This definition captures asset and share purchases, joint ventures, mergers, and takeovers.

The Guidelines confirm that if a transaction does not lead to a change of control over the target entity, then no GAC filing would be required. The Saudi merger control regime recognises exceptions of application for public institutions and state-owned companies, if they are solely authorised by the KSA government to supply goods or services in certain a field.

While prior to the issuance of the Guidelines it remained unclear how the GAC would analyse the elements of control, the Guidelines now clarify this by defining “control” as “the ability to exercise decisive influence over the strategic or operational decisions of the target entity”, including the appointment of senior management and approval of budgets, business plans, and major investments.

The Competition Law also recognises a jurisdictional threshold that the entities involved in the economic

concentration must meet in order to be obliged to notify the concentration to the GAC. Such a threshold is the total annual sales value of the entities seeking to participate in the economic concentration which exceeds the amount determined by the Regulations. The Guidelines also elaborate on how the threshold in question is being calculated. On such a note, the Competition Law does not distinguish between sales taking place within KSA and those taking place outside KSA. Accordingly, the GAC will consider the relevant annual sales figures to be the combined aggregate group-wide and worldwide sales figures of all the relevant entities. Other thresholds taken into account by the GAC when examining an economic concentration would be the market shares and market concentration in the context of the other relevant factors that the GAC may consider in order to conclude if a market concentration will take place.

Moreover, the Competition Law specifies “all the entities participating in the concentration” and does not distinguish between acquiring and selling an entity or between mergers and acquisitions. The Competition Law therefore requires that the notification threshold considers the total sales of all entities participating in the concentration without distinction or exclusion.

The GAC considers that the entities “participating” in the concentration are all those that form part of the newly concentrated entity after the economic concentration transaction has been completed. This means that where:

- A) two or more entities merge, the relevant entities are the merging entities in their entirety;
- B) one entity acquires another entity, the relevant concentrated entities are the entire entity that is acquiring the other entity, and the entity being acquired, but not the entity that is selling the entity being acquired;
- C) one entity acquires a part of another entity’s operations, for example through purchasing a subsidiary or operational division, the relevant entities are: (i) the entire entity which is acquiring the operations or

division; and (ii) the operations or division it is acquiring, but not the entity which is selling the operations or division. This is because the acquiring entity and the target operations or division generally form/s part of (and are therefore participating in) the economic concentration, but the selling entity generally does not form part of the economic concentration; and

D) two or more entities together participate in a full-function joint venture, the relevant entities for the notification threshold are all the entities acquiring joint control of the joint venture in addition to the joint venture itself. This principle applies both to newly formed joint ventures and to the acquisition of joint control of pre-existing entities.

The merger control regime also recognises two or more legal entities as to form part of the same economic entity if they constitute a “single economic entity”. The primary criterion in determining whether different legal entities form part of a single economic entity is “control”, with an exception to revenues resulting from transactions between the different legal entities within the same group. Such intra-group transactions are not considered to be sales of the single economic entity.

Additionally, the Competition Law also applies to undertakings (i.e. entities) outside KSA where those undertakings’ activities, including any economic concentration, may have an effect on a market in KSA. Article 3 of the Regulations further provides that the GAC may assess the effect, actual or potential, of such conduct outside the KSA on a market inside the KSA, constituting what is known as the Nexus Test.

2. Is notification compulsory or voluntary?

Merger control notifications are compulsory with respect to any entity that is encompassed within the scope of the KSA Competition Law with exception of transactions that do not result in a change of control (eg, acquisition of minority interests with no veto rights over strategic decisions or internal restructuring within the same corporate group) or which do not have a nexus to the relevant market in the KSA jurisdiction. The Competition Law also recognises an exception for public institutions and state-owned companies if they are solely authorised by the KSA government to supply goods or services in a certain field.

3. Is there a prohibition on completion or closing prior to clearance by the relevant authority? Are there possibilities for

derogation or carve out?

The Competition Law provides that the undertakings participating in the economic concentration (or transaction) may not complete the transaction unless notified by the GAC of its approval in writing, or if 90 days have elapsed since the review period by the GAC commenced and it has not provided an approval or rejection.

The 90-day regulatory review period will begin on the date on which the GAC notifies the applicant that the notification submission is complete. If the last day of this regulatory review period corresponds to an official holiday, the next working day thereafter shall be considered the last day of this regulatory review period.

Where an economic concentration is notifiable to the GAC, it is a violation of the Competition Law for the transaction to be completed unless the participating parties have received the GAC’s approval in writing. As such, the parties may execute the transaction documents, but must hold off on implementation until after clearance is provided by the GAC. In the event the parties are forced to complete closing prior to receiving clearance from the GAC, they may carveout the jurisdiction. Carveouts are tailored on a case-by-case basis with a focus on maintain the current status of control with respect to each party until after receiving clearance.

4. What types of transaction are notifiable or reviewable and what is the test for control?

The Competition Law defines the economic concentration as any action that results in a total or partial transfer of ownership of assets, rights, equity, stocks, shares, or liabilities of a firm to another by way of merger, acquisition, takeover, or the joining of two or more managements in a joint management, or any other form that leads to the control of an entity, including influencing its decision, the organisation of its administrative structure, or its voting system. This definition captures asset and share purchases, joint ventures, mergers, and takeovers. Hence, any transaction where such change of control exists must be notified to the GAC. As exceptions, the Guidelines confirm that transactions that do not result in a change of control (eg, acquisition of minority interests with no veto rights over strategic decisions or internal restructuring within the same corporate group) do not require any filings. Also, public institutions and state-owned companies, if they are solely authorised by the KSA government to supply goods or services in certain a

field.

As mentioned in section 1, the Competition Law specifies “all the entities participating in the concentration” and does not distinguish between acquiring and selling an entity or between mergers and acquisitions. The KSA Competition Law therefore requires that the notification threshold considers the total sales of all entities participating in the concentration without distinction or exclusion.

The GAC considers that the entities “participating” in the concentration are all those that form part of the newly concentrated entity after the economic concentration transaction has been completed. This means that there are (4) main types of transactions that are notifiable based on participating entities:

1. two or more entities merge, the relevant entities are the merging entities in their entirety;
2. one entity acquires another entity, the relevant concentrated entities are the entire entity that is acquiring the other entity, and the entity being acquired, but not the entity that is selling the entity being acquired;
3. one entity acquires a part of another entity’s operations, for example through purchasing a subsidiary or operational division, the relevant entities are: (i) the entire entity which is acquiring the operations or division; and (ii) the operations or division it is acquiring, but not the entity which is selling the operations or division. This is because the acquiring entity and the target operations or division generally forms part of (and are therefore participating in) the economic concentration, but the selling entity generally does not form part of the economic concentration; and
4. two or more entities together participate in a full-function joint venture, the relevant entities for the notification threshold are all the entities acquiring joint control of the joint venture in addition to the joint venture itself. This principle applies both to newly formed joint ventures and to the acquisition of joint control of pre-existing entities.

Additionally, the KSA Competition regime recognises the different types of transactions that may take place between a group of companies for the purpose of determining the applicable jurisdictional thresholds.

It has to be noted that the foreign transactions where the transaction parties’ activities, including any economic concentration, may have an effect on a market in KSA. Article 3 of the Regulations further provides that the GAC may assess the effect, actual or potential, of

such conduct outside Saudi Arabia on a market inside KSA using what is known as the nexus test.

On the test for control prior to the issuance of the Guidelines, it remained unclear how the GAC would analyse the elements of control, the Guidelines now clarify this by defining “control” as “the ability to exercise decisive influence over the strategic or operational decisions of the target entity”, including the appointment of senior management and approval of budgets, business plans, and major investments.

5. In which circumstances is an acquisition of a minority interest notifiable or reviewable?

As mentioned in section 4 on the test of control, acquisitions of minority interests are generally non-notifiable. However, if this acquisition is coupled with veto rights over strategic decisions or internal restructuring within the same corporate group, or any other rights that are normally given to controlling shareholders, then such a minority acquisition would be notifiable.

6. What are the jurisdictional thresholds (turnover, assets, market share and/or local presence)? Are there different thresholds that apply to particular sectors?

Article 7 of the Competition Law provides that the entities involved in the economic concentration must notify the concentration to the GAC if the total annual sales value of the entities seeking to participate in the economic concentration exceeds the amount determined by the Regulations. Meaning that there are two matters to be observed, A) the jurisdictional thresholds and how they are calculated; and B) the parties to the concentration involved in such a calculation.

A) Jurisdictional Thresholds and Calculation

Article 12 (1) of the Regulations specifies that the concentration must be notified to the GAC if the total annual sales value of all entities intending to participate in the economic concentration exceeds SAR200 million. This requirement was established in accordance with the GAC’s approved decision dated 23/08/1444H corresponding to 15/03/2023G, which increased the threshold from SAR100 million to SAR200 million.

Article 12 (2) of the Regulations also provides that where it is impossible to estimate the annual sales value of the entities, or where the entities’ business activities do not

extend for a full fiscal year, then the annual sales value for the whole year shall be estimated based on the firms' activity, as the case may be.

On calculation, the Competition Law bases the notification threshold on "the total annual sales value of the entities seeking to participate in the economic concentration".

In most cases, the "total annual sales value" will be the total gross revenues of the relevant entity. These are the amounts obtained by the entity from the sale of products and services falling within the entity's ordinary business and related activities. For most entities that have financial statements prepared under the standards of the Saudi Organisation for Certified Public Accountants (SOCPA) or the equivalent prevailing accounting standards in the relevant entity's place of incorporation, the annual sales will be the entity's revenue appearing in the entity's income statement, as reflected in the entity's most recent audited financial statement. Where the entity is not required to produce audited financial statements, the annual sales will be the entity's revenue appearing in its most recent annual statement of income and expenses regularly prepared in accordance with the SOCPA standards or the equivalent accounting principles adopted by the entity, as the case may be.

In the event that the relevant undertaking is an individual or a natural person, the GAC will in general apply the same principles to determine the relevant annual sales of the individual. The individual's annual sales will generally be their annual revenue amounts obtained from their ordinary business activities. The GAC will determine this on a case-by-case basis within the context of these general principles.

However, where the entity's total sales incorporate sales rebates subsequently provided to its customers, the value of the sales rebates may be deducted from the gross sales figures to calculate the entity's total sales for the purposes of the notification threshold.

In addition, where the entity's total sales revenues incorporate the amount of value-added taxes and other taxes directly related to sales, the value of such taxes may be deducted from the gross sales figures to calculate the entity's total sales for the purposes of the notification threshold.

Lastly, the Competition Law does not distinguish between sales taking place within KSA and those taking place outside KSA. Accordingly, the GAC will consider the relevant annual sales figures to be the combined aggregate group-wide and worldwide sales figures of all the relevant entities. If the entity's financial statements are presented in a foreign (other than KSA) currency,

then the annual gross revenues should be converted to values in Saudi Arabian Riyals according to the average over the relevant financial year of the foreign exchange rate quoted by the Saudi Central Bank.

B) Entities Relevant for the Calculation of Jurisdictional Thresholds

As detailed in section (4) above, the Competition Law specifies that the participating entities in the transaction subject to the merger control regime. This gives a general sense of which entities's realised total sales are used for calculation of the jurisdictional threshold.

Additionally, the Guidelines explains that, in calculating the jurisdictional thresholds, how a "single economic entity" (two or more legal entities will be considered to form part of the same economic entity) are examined. The primary criterion in determining whether different legal entities form part of a single economic entity is "control". If one legal entity controls other legal entities (such as subsidiaries), either directly or indirectly, then for the purposes of determining the total annual sales values of the entity, the relevant single economic entity will include the controlling entity and all of the entities it controls. If a single economic entity consists of two or more legal entities, and each of those legal entities prepares accounts, then the total sales of the single economic entity for the purposes of calculating the notification thresholds are the total combined gross sales revenues of all of the entities. A group will therefore include all companies that have direct or indirect control-based links with the entity concerned, including its subsidiaries, but also including its parent company(ies) and any other companies within the parent company's group. The single economic entity's revenues will exclude revenues resulting from transactions between the different legal entities within the group. Such intra-group transactions are not considered to be sales of the single economic entity.

C) Market Share Jurisdictional Threshold

In addition to the above, the GAC will consider market shares and market concentration in the context of the other relevant factors that it may consider in order to conclude if a market concentration will take place. The GAC typically measures market concentration using market shares, market concentration ratios, and the Herfindahl-Hirschman Index (HHI). The HHI is calculated by adding the sum of the squares of the post-merger market share of the merged firm and each rival firm in the relevant market, thereby giving greater weight to the market shares of the larger firms. The HHI therefore requires the market shares, or estimates of them, for all the participants in the relevant market.

The GAC will generally use the following HHI thresholds to undertake a preliminary assessment of the potential competition effects of an economic concentration.

The GAC is unlikely to identify horizontal competition concerns in an economic concentration in a market with a post-concentration HHI below 1,000. Such an economic concentration generally does not require extensive further analysis.

The GAC is unlikely to identify horizontal competition concerns in an economic concentration with a post-concentration HHI between 1,000 and 2,000 and an HHI delta below 250, or an economic concentration with a post-concentration HHI above 2,000 and an HHI delta below 150, except where special circumstances that require additional competition analysis are present.

7. How are turnover, assets and/or market shares valued or determined for the purposes of jurisdictional thresholds?

N/A

8. Is there a particular exchange rate required to be used to convert turnover and asset values?

If an party to an economic concentration's financial statements (*from which the jurisdictional threshold is calculated*) are presented in a foreign (other than Saudi) currency, then the annual gross revenues should be converted to values in Saudi Arabian Riyals according to the average over the relevant financial year of the foreign exchange rate quoted by the Saudi Central Bank.

9. In which circumstances are joint ventures notifiable or reviewable (both new joint ventures and acquisitions of joint control over an existing business)?

A joint venture will constitute an "economic concentration" when "the joint venture forms an autonomous economic undertaking, or performs the economic functions of an autonomous economic undertaking, on a lasting basis". This would be considered a "full-function joint venture". The GAC will decide whether a joint venture would be considered a full-function joint venture on a case-by-case basis. Attributes of a full-function joint venture include the following:

- * The joint venture must operate in a market and

perform the functions normally carried out by a commercial undertaking operating in that market.

- * The joint venture must ordinarily have a management team dedicated to its day-to-day operations and access to sufficient resources, including finance, staff, and assets (tangible and intangible), in order to conduct, on a lasting basis, its business activities within the area provided for in the joint-venture agreement.

- * It must be intended to operate for a sufficiently long period to bring about a lasting change in the structure of the undertakings concerned (the joint-venture resources would be indicative, on this point).

- * It will ordinarily have sufficient autonomy from its parent undertakings, in terms of its operational decision-making, to be considered a full-function joint venture.

A joint venture may begin its life as a non-full-function joint venture and subsequently becomes a full-function joint venture. It will, at that time, be considered as a new economic concentration requiring notification. Such a change in the nature of the joint venture can include the following:

- * The joint venture's activities are enlarged during its lifetime, such as commencement of commercial sales to third parties in an open market.

- * Enlargement of the joint venture, such as through acquisition by the joint venture of the whole or part of another undertaking from the parent undertakings.

- * The parent undertakings transfer significant additional assets, contracts, know-how, or other rights to the joint venture, where this transfer would constitute or enable an extension of the joint venture's activities, products, or geographic markets that were not the object of the original joint venture.

- * A change in the organisational structure of the joint venture.

Changes in the nature of the joint venture are considered to have taken place upon the shareholder/s or the joint venture's management taking the relevant decision that led to the joint venture becoming a full-function joint venture, or from when the relevant activity commenced.

10. Are there any circumstances in which different stages of the same, overall transaction are separately notifiable or reviewable?

N/A

11. How do the thresholds apply to “foreign-to-foreign” mergers and transactions involving a target /joint venture with no nexus to the jurisdiction?

The GAC will require economic concentrations taking place outside KSA to be notified where there is a sufficient nexus between the economic concentration and a market inside KSA. Pursuant to the Competition Law and the Regulations, this nexus is established where the foreign conduct (including economic concentrations among foreign undertakings) may have an effect on a market inside KSA.

The GAC will consider that there is sufficient influence on a market in KSA where that potential result is direct, substantial, and reasonably foreseeable.

Such economic concentrations among foreign undertakings are subject to Article 7 of the Competition Law and must, therefore, in general be notified if the other relevant criteria for required notification are also fulfilled.

The GAC will generally not consider there to be sufficient impact on the KSA market where the foreign conduct (including economic concentrations) does not meet these criteria. For clarity, a direct effect is not limited to direct sales and may take place by way of indirect sales (eg, sales by way of a distributor).

The GAC will also look at whether the actual or potential effect on competition is substantial. This requires that the effect takes place within a market in KSA. The GAC considers that this test will generally mean that jurisdiction is established where the actual or potential effect of the conduct on a market inside KSA is more than trivial.

Furthermore, the GAC will look at whether the potential effects on a market are reasonably foreseeable. In the general case, this will mean that the effect of the foreign conduct (including an economic concentration) can be reasonably foreseen and is more than merely speculative.

In general, the GAC will consider it to be sufficient to establish a nexus if one or more of the foreign undertakings has sales in KSA. However, sales in KSA are not necessary to establish a sufficient nexus with a market in KSA.

12. For voluntary filing regimes (only), are there any factors not related to competition that might influence the decision as to whether or not to notify?

N/A

13. What is the substantive test applied by the relevant authority to assess whether or not to clear the merger, or to clear it subject to remedies? Are there different tests that apply to particular sectors?

The GAC will apply the following tests to assess clearing the transaction in question.

A) The General Substantive Test

When assessing whether an economic concentration substantially lessens competition, the GAC will examine the competitive impact of the transaction in the context of the markets relevant to the economic concentration.

In defining markets in their product and geographic dimensions, the GAC focuses on two key dimensions of substitution:

*The product dimension – substitution between products is a central concept in defining the product dimension of markets. The GAC notes that “product” in this context includes goods, services, and other equivalent economic outputs.

*The geographic dimension – substitution between different locations of the relevant goods or services is a central concept in defining the geographic dimension of markets. The GAC notes that the “geographic dimension” in this context may be local, regional, national, or wider, including worldwide.

When defining markets, the GAC will in most cases follow a general approach.

*First, the products and geographic regions actually or potentially supplied by the economic concentration parties will be identified. This is the first step in identifying the markets that may be relevant in the analysis of the economic concentration. In this way, the GAC begins by considering those areas of activity where competitive harm may occur, by considering in each case the products and geographic regions where there may be an overlap between the activity of the economic concentration parties, or some other meaningful economic relationship such as an actual or potential vertical relationship. This is done on a case-by-case

basis. In many cases, more than one potential market may be identified.

*The GAC then considers the boundaries of those potential markets in their product and geographic dimensions. A properly defined relevant market includes all those products and geographic regions that are sufficiently close substitutes of the products and geographic regions first considered.

Further to the above, there are specific factors enumerated in the Regulations that the GAC may pass within its overall objectives of protecting and promoting competition within a market. These are as follows:

*Structures of relevant markets and the level of actual or potential competition between undertakings inside the KSA or abroad, in cases where it has an impact on local markets.

*Financial positions of the parties to an economic concentration.

*Commodity alternatives that are available to consumers, vendors, and clients, and how accessible such alternatives are.

*Level of product differentiation.

*Consumer interests and welfare.

*Potential impact of the economic concentration on prices, quality, diversification, innovation, or development in a relevant market.

*Actual or potential harm or benefits to competition from the economic concentration transaction.

*Supply and demand growth and trends in the relevant market and commodities.

*Barriers to entry or exit of new undertakings into a relevant market, their continuation therein, or expansion, including regulatory barriers.

*The extent to which an economic concentration may create or strengthen a significant market power or a dominant position of an undertaking – or group of undertakings – in any relevant market.

*The level and historical trends of anti-competitive practices in a relevant market, either for the parties to an economic concentration or the undertakings influential in such market.

*Views of the public, economic concentration-related parties, and sector regulators.

Dominance in a relevant market can be demonstrated if one or both of the following criteria are achieved.

*A market share of 40% or more of the relevant market – whether it is the share of a single firm or a group of firms, whenever that group acts with a common will in committing the violation or causing the effect.

*Ability to influence a relevant market such as controlling prices, production, or demand – whether it is the ability of a single firm or a group of firms, whenever that group acts with a common will in committing the violation or causing the effect.

We note that there is no indication of the GAC relying on case law with respect to issues such as market definitions from other jurisdictions.

B) Competition Concerns

The GAC will broadly consider the following three categories of economic concentration:

* Horizontal concentrations – these involve concentrations of (actual or potential) suppliers of substitutable goods or services, typically operating on the same or a comparable functional level of the supply chain, and therefore commonly a concentration of competitors in the same market.

* Vertical concentrations – these involve undertakings operating (or potentially operating) at different functional levels of the same vertical supply chain, commonly where the output in one market is an input into production in the other market, and are therefore commonly not in direct competition with each other in any market.

* Conglomerate concentrations – these involve undertakings that operate (or potentially operate) in different markets and without being in the same vertical supply chain, but supply goods or services that are in some way related to each other; eg, products that are complements for consumers or in production.

C) Economic Efficiencies

The GAC assesses the effect of economic concentrations on competition, competitive constraints, and the efficiency of markets, rather than on the efficiency of individual entities.

The consideration of efficiencies is relevant to the competition assessment if, and only if, the efficiencies are likely to result in lower (or not significantly higher) prices, increased output and/or higher quality goods or services, in which case the conclusion may be that the

economic concentration may not substantially lessen competition.

For the GAC to take account of efficiency claims in its assessment of an economic concentration and to be in a position to reach the conclusion that, as a consequence of efficiencies, the economic concentration is unlikely to substantially lessen competition, the efficiencies have to:

- * benefit consumers;
- * be specific to the economic concentration; and
- * be verifiable.

All of these conditions must be satisfied for the GAC to consider efficiencies in the context of its competitive assessment of economic concentrations.

On considering non-competition issues, there is no express limitation or permission on what the GAC can take into account to achieve the objectives of Competition Law and Regulations. For instance, Saudi Arabia has a standalone law with respect to foreign investments that seems to be separate from the Competition Law.

It is clear that to the extent the transaction creates an economic concentration that sufficiently impacts a market in KSA, the GAC board has the authority to reject the notification filing and block the transaction from taking place or require conditions (remedies) for the transaction to proceed, depending on the conclusion arrived to based on the above test. The GAC has this authority pursuant to the KSA Competition Law and Regulations.

14. Are factors unrelated to competition relevant?

We are not aware of other incidents where factors other than those related to competition were found relevant in an economic concentration.

15. Are ancillary restraints covered by the authority's clearance decision?

As explained above, the GAC clearance decisions do not address any ancillary issues outside the sphere of competition issues.

16. For mandatory filing regimes, is there a statutory deadline for notification of the

transaction?

With respect to the required notification in the event the Competition Law and Regulations are applicable to a specific economic concentration, the relevant participants must notify the GAC 90 days before completion of the economic concentration.

As explained in section 3 above, not following the deadline and closing the transaction without filing or filing beyond the deadline could result in various penalties.

17. What is the earliest time or stage in the transaction at which a notification can be made?

As discussed in section 16 of this Q&A, there is no specific point in time that qualifies as an early point but only a deadline. On the relevant stage for filing, we note that the GAC requires as part of the initial application for notification to the GAC that the applicant provides a finalised, duly executed agreement to carry out the economic concentration, stating the nature of the transaction and a description of the shares, equity, assets, rights, or obligations to be purchased or transferred, or managements to be joined, between the relevant entities. The GAC requires these documents for valid notification. If notification is made without all the requisite documents being provided, the GAC reserves the right to close the notification file.

18. Is it usual practice to engage in pre-notification discussions with the authority? If so, how long do these typically take?

The GAC is generally available for discussions with parties or their representatives prior to the formal notification of an economic concentration transaction.

Pre-notification discussions are entirely voluntary and at the parties' discretion. The GAC will not conduct pre-notification discussions on a hypothetical basis or without knowing the identities of the parties and markets at issue. To request a pre-notification discussion, the parties or their representatives should provide the following information to the GAC:

- * the names and contact information of the economic concentration parties and their representatives (if any);
- * the type of transaction;
- * the markets or goods and services affected by the proposed transaction; and

* the possible impact of the transaction on competition in general terms.

It is generally recommended that this information be provided in the form of a brief confidential memorandum to the GAC as this will assist the efficiency of the pre-notification process.

Pre-notification discussions are encouraged by the GAC and treated as strictly confidential. Said pre-notification submission is also known as a “notification not required” submission. The parties provide the information listed above and request a “notification not required certificate” from the GAC. Generally, this process only takes one (1) week to complete. Once the notification not required certificate is obtained from the GAC, the parties are free to conclude the closing of the transaction.

19. What is the basic timetable for the authority’s review?

The economic concentration must be notified to the GAC at least 90 days prior to the completion of the economic concentration. The applicant’s notification submission will be considered to be complete when the applicant has satisfied the required conditions for notification, including providing the required information and documents necessary for complete notification. The 90-day regulatory review period will begin on the date on which the GAC informs the applicant that their notification submission is complete.

A case team will be appointed to conduct a review and investigation into the economic concentration, within the 90-day period. Once the case team has completed its review, it will submit a detailed note outlining its opinion for the GAC’s board of directors. The board will evaluate the case team’s opinion, taking into account all relevant factors and its objectives under the KSA Competition Law and Regulations. The board will issue a decision in one of the following three ways:

- A) approval of the economic concentration application;
- B) refusal of the economic concentration application, where such decision will be accompanied by a statement of reasons; or
- C) approval of the economic concentration, subject to conditions determined by the board, where such decision will be accompanied by a statement of reasons.

Generally in practice, the timetable from acceptance of the application (with no further queries from the GAC) until clearance, has been 60 days.

20. Under what circumstances may the basic timetable be extended, reset or frozen?

The GAC statutory review period may only be suspended when:

- A) the GAC requests any information or documents from the applicants – it may suspend the regulatory review period from the date when it requests the information or documents, to the date when the applicant provides the requested information or documents; or
- B) the GAC finds that the economic concentration parties or their representatives have provided incorrect information or failed to submit available information to the GAC within the prescribed period.

21. Are there any circumstances in which the review timetable can be shortened?

In the event the parties submit an economic concentration application and for the GAC does not believe it is notifiable for any reason, then they will request the parties to close out the economic concentration application and submit a “notification not required” application. As mentioned previously, the obtaining a notification not required certificate. certificates only takes one week from submission.

22. Which party is responsible for submitting the filing?

The parties intending to participate in the economic concentration transaction must notify the GAC of the transaction. Notice of the transaction may be provided by the parties’ legal representative. A failure by the concentration parties to submit a notification does not preclude the GAC from initiating a review and assessment of the economic concentration either prior to or after the completion of the transaction.

23. What information is required in the filing form?

The GAC does not provide a fillable form but rather an online application through the GAC’s Portal. The notification should in general be completed in the Arabic language. Notifying parties may choose to complete the forms in the English language but this must be accompanied by a translation into Arabic. The online application is designated for all notifiable transactions.

When submitting the notification, the applicant should

submit all relevant information and documents that detail the relevant transaction. This includes various compulsory documents such as: (i) the duly completed notification form, including the declaration as to the validity and accuracy of the information contained in the notification; (ii) relevant identification documents of the person submitting the notification; (iii) the required parties' documents (explained below); (iv) the finalised, duly executed agreement to carry out the economic concentration, stating the nature of the transaction and a description of the shares, equity, assets, rights, or obligations to be purchased or transferred, or managements to be joined, between the relevant entities; (v) a report that describes the economic impact of the transaction on the relevant markets ("**Economic Report**") and (vi) other relevant information as the case may be.

We note that if a notification is made without all the requisite documents being provided, the GAC reserves the right to close the notification file. The GAC's annual reports for 2022, 2021, 2020, and 2019 reveal that only one application was rejected in 2021 due to an incomplete notification application, and one was rejected in 2022 upon review for competition purposes. This is in contrast to the years 2020 and 2019, when there were no rejected applications for this reason.

24. Which supporting documents, if any, must be filed with the authority?

In addition to the documents stipulated in section 23 above, the following information must be included in the Economic Report: (i) the economic concentration transaction and the participating parties; (ii) the relevant sectors and markets in which the economic concentration may have an affect; (iii) the key customers of the participating parties in those sectors and markets; (iv) the key competitors of the participating parties in those sectors and markets; and (v) the potential impact of the economic concentration transaction on competition in those sectors and markets – the GAC can discuss with the notifying parties the contents of such an Economic Report, and provide a brief template, upon request, plus any other data, information, or documents required by the GAC to review the economic concentration.

Also, the following party-specific documents must be submitted with the application:

1- For the acquiring entity/merging entity/first partner in the joint venture: (i) validated Power of Attorney (POA) by the Ministry of Justice/KSA Embassy/KSA Consulate; (ii) articles of association; (iii) commercial register; and

(iv) financial statements for last financial year (LFY).

2- For the target entity/merged entity/second partner in the joint venture: (i) validated POA by the Ministry of Justice/KSA Embassy/KSA Consulate; (ii) articles of association; (iii) commercial register; and (iv) financial statements for LFY.

3- For the seller: (i) validated POA by the Ministry of Justice/KSA Embassy/KSA Consulate; and (ii) commercial register.

In addition to the official contact persons for the economic concentration parties and any relevant third parties are specified in the submission.

25. Is there a filing fee?

The fee to be paid for examining the economic concentration (the "**Notification Fee**") is 0.0002 times (0.02% of) the total annual sales value of undertakings intending to participate in the economic concentration, with an upper limit of SAR250,000 that was introduced in early 2023. The parties must pay the notification fee before submission of the notification and must submit proof of payment of the notification fee along with the other notification documents and information. The GAC requires this proof of payment before the notification will be considered to be complete.

26. Is there a public announcement that a notification has been filed?

The GAC does not publish that a notification has been filed. However, the GAC publishes its decisions on its website whenever the economic concentration is cleared by the GAC.

27. Does the authority seek or invite the views of third parties?

Relevant third parties could be involved in the review process by the applicant including them in the application submission, or by the GAC requiring their input. The third parties have a right to request an interview or make a claim as part of a specific investigation for economic concentration. The GAC may elicit information from third parties by conducting a survey.

The case team may discuss its interim assessment with third parties in order to identify and to seek to resolve any unresolved issues. The team may present its assessment or a part thereof to third parties for their

opinions, while taking into account the need to obtain objective, impartial, and substantiated opinions.

The third parties' interests in confidentiality will be preserved throughout the assessment and investigation process. No documents of the third parties will be shared with others, except pursuant to the procedures outlined in the guidelines. Where a GAC document to be released during interim consultations contains information that is confidential to a third party, the GAC will prepare a public version of that document which redacts any such confidential information. The parties whose confidential information is to be redacted will be given an opportunity to comment on this redaction.

28. What information may be published by the authority or made available to third parties?

The GAC does not publish any information in terms of announcements. The Competition Law provides that the members of the board of directors and the employees of the GAC must maintain the confidentiality of information, records, data, files, and documents (together, "information") obtained from the economic concentration parties or other entities in the course of collecting evidence or investigations. Such information may not be passed to other parties except with the approval of the board, where the board's approval has been recorded in the meeting minutes, or with the approval of the Governor in the following cases:

- A) with the consent of the party providing the information;
- B) for submission of the information to judicial and quasi-judicial bodies; or
- C) for the purposes of the exchange of views and opinions with international competition authorities concerned with the review process, where the economic concentration parties have been notified of the GAC's intention to disclose the information, and provided that the international competition authority receiving the information shall take the necessary legal measures for the protection of the confidentiality of the information.

29. Does the authority cooperate with antitrust authorities in other jurisdictions?

Where an economic concentration is also being reviewed by competition authorities in other countries, including in cases where the possibility of remedies has also been raised in those other countries, the GAC will seek, where possible and reasonable, to consult and co-ordinate with

those foreign competition authorities. This consultation and co-ordination is for the purpose of seeking consistency where this is feasible and appropriate, including in relation to remedies.

Where appropriate, the GAC will seek confidentiality waivers from economic concentration parties that allow the GAC to exchange confidential information relating to the economic concentration with the relevant overseas competition authorities. The GAC expects economic concentration parties to give it the same notice of economic concentrations and any potential remedies offered as the parties give to the overseas competition authorities, and normally requires simultaneous lodgement of submissions with the GAC and overseas competition authorities.

30. What kind of remedies are acceptable to the authority?

A) Legal Standard

There is no specifically expressed legal standard for remedies. An acceptable remedy must adequately address and alleviate the potential competition harm created by the specific economic concentration.

B) Typical Remedies

The most common form of structural remedy likely to be accepted by the GAC is divestiture. To date, we are not aware of the GAC requiring remedies to address non-competition issues.

C) Negotiating Remedies with Authorities

Economic concentration parties are free to propose remedies to the GAC at any time throughout the transaction review process, including at the outset of the review, the prenotification phase, the moment of first notification, and after the economic concentration parties have been advised of potential competition concerns during a review. In general, economic concentration parties are encouraged to begin discussions with the GAC as early in the process as possible.

When an economic concentration raises competition issues at the outset or during a review, the economic concentration parties may decide to offer remedies to the GAC. If the GAC accepts that the remedies are sufficient to address the competition concerns in that case, the GAC may decide to approve the economic concentration subject to the condition that the remedies be implemented, rather than blocking the economic concentration.

31. What procedure applies in the event that remedies are required in order to secure clearance?

A divestiture remedy will normally specify the following key elements:

A) the scope of the divestiture package, such as the assets or businesses (or parts of businesses) to be disposed;

B) the process for selecting a purchaser; and

C) the process for the disposal, including the required timeline for the disposal.

Parties may not complete a transaction before remedies are complied with. The GAC maintains a role in relation to remedies and conditions accepted with respect to economic concentrations, including:

- * monitoring parties' compliance with commitments; and

- * investigating suspected breaches and enforcing remedies and conditions, including by legal action where appropriate.

Non-compliance or breach of an agreed remedy is a violation of the Competition Law.

- * Where the economic concentration parties commit a breach of an obligation under the conditions, the GAC may revoke its approval decision. In some cases, such as where a required divestiture is not made within the required timeframe, the GAC's decision to approve the economic concentration subject to the conditions may lapse on the basis that the required condition was not fulfilled. This, and comparable breaches of the conditions, may subject the economic concentration parties to fines under Article 19 of the Competition Law.

- * The economic concentration parties may also be subject to fines under Article 20 of the Competition Law, and other measures under Article 21 of the Competition Law, including requiring the economic concentration parties to unwind the economic concentration. Furthermore, the GAC will also take into account all other relevant provisions of the Competition Law and the Executive Regulations in setting fines and other measures, including but not limited to Article 22 of the Competition Law and Chapter 7 of the Regulations.

A formal decision permitting or prohibiting a transaction may be issued to the party by the GAC. In the event that the investigation period of 90 days elapses without the issuance of a decision by the GAC, then it would be considered an approval pursuant to the KSA Competition

Law. The application decisions are made public (as a statistic in the GAC annual report); however, the party names are not mentioned unless they are penalised.

We are not aware of the GAC having required remedies or prohibited foreign-to-foreign transactions.

32. What are the penalties for failure to notify, late notification and breaches of a prohibition on closing?

The Competition Law provides for the various penalties upon breach. In respect of Articles 5, 6, 7, and 11 (Anti-competitive Practices, Abuse of a Dominant Position, and Unlawful Economic Concentrations), a fine not exceeding an amount equal to 10% of the total annual sales of the subject matter of the violation, or, where it is not possible to assess the relevant sales, a fine not exceeding SAR10 million, may be imposed. The Settlement Committee (GAC committee charged with reviewing any alleged breaches of the KSA Competition Law and Executive Regulations, excluding Articles 12 and 24, and imposing penalties appropriately) may, at its discretion, elect instead to impose a fine not exceeding three times the profit generated by the offence. The amount of the fine may be doubled in the case of a repeat offence.

In respect of Article 16 (impeding investigation), a fine not exceeding an amount equal to 5% of total annual sales, or, where it is not possible to assess the relevant sales, a fine not exceeding SAR5 million, may be applied. The value of the fine may be doubled in the case of a repeat offence.

In respect of other breaches, a fine not exceeding SAR2 million may be enforced.

When the Settlement Committee imposes any of the aforementioned penalties, the following shall be taken into consideration:

- * If the entity is engaged in several activities where each activity differs from the other, any fine shall be assessed according to the nature of the activity of the subject matter of the violation, taking into account: the activities targeted by the violation; the conditions and circumstances of the violation; the gravity of the violation; and the effects of the violation.

With respect to penalties implemented, the GAC publishes the relevant statistics annually. The latest report provided on the GAC's website is for the year 2022. The report details that the GAC received 126 complaints in regard to violations of the KSA Competition Law. Ultimately, the GAC proceeded with 12 cases in

total and decided to initiate investigation, research, and evidence-gathering. In 2022, no identifiable number of final judgments issued in favour of the GAC was named, compared to 22 known to have been issued in 2021. Pursuant to article 19 of the KSA Competition Law, the final judgments implemented against the violators shall be published at the expense of the violators. As such, the GAC published, in its 2022 annual report (similar to 2021), tables of judgments issued in its favour, along with each issuer, the number of enterprises, the fine amounts, the violation types and the sectors each violator did business in. The top two violation types involved were "Abuse of Dominant Position" and "Collusion in Tenders". The total amount of fines collected was SAR 90,566,313.70 for the year 2022 compared to SAR 102,120,000 in 2021.

33. What are the penalties for incomplete or misleading information in the notification or in response to the authority's questions?

Pursuant to Article 49 of the Regulations, if the notifying party is found to have withheld information, provided misleading information, or concealed or destroyed documents that are useful in the GAC's investigation, they would be punished by a fine not exceeding 5% of the total annual sales turnover or not exceeding SAR 5 million when it is impossible to estimate the annual sales.

34. Can the authority's decision be appealed to a court?

The parties to an Economic Concentration have 30 days from the date of notification or from the date specified for delivering the decision to the parties of the case, even if they failed to appear, to appeal the GAC's decision to the Riyadh Administrative Court of Appeal, otherwise it will become final.

If one of the parties appeals the GAC's decision before the Riyadh Administrative Court of Appeal, that party must notify the GAC within three working days from the date of appeal, by means of a letter containing the GAC's decision number and date, and the number and date of the appeal filed with the Riyadh Administrative Court of Appeal and a copy thereof.

No statistics have been released with respect to successful or unsuccessful appeals against the GAC. Especially in regard to the expected timeline for the completion of such appeals. Additionally, we are not aware of any third-party appeals of GAC decisions as of

yet.

35. What are the recent trends in the approach of the relevant authority to enforcement, procedure and substantive assessment

As of 2022, the GAC received 316 applications for economic concentration. It issued 176 no-objection decisions, achieving the highest rate of decisions issued by GAC in one year. It processed 128 applications as non-reportable applications and rejected 1 application, while 11 applications are still under review.

The GAC has issued its only known rejection in the past three years. On that rejection, an acquiror had announced the signing of a share purchase agreement to acquire 55% of the acquired. The total value of the transaction amounted to 29.1225 million Saudi Riyals. The signing of the share purchase agreement and the announcement did not imply the completion of the transaction, as it is contingent upon the approval of GAC. However, GAC issued its decision rejecting the transaction.

Through its interviews and investigations with competing third parties in relation to the acquired, GAC concluded the existence of significant concerns regarding the potential consequences of completing this transaction. Competition authorities are committed to maintaining a vibrant competitive landscape in markets and reducing barriers to entry. In its analysis of entry barriers resulting from the execution of the economic concentration transaction, GAC arrived at two conclusions:

First: GAC believed that the ownership by the acquiror of competitors' data obtained from competitor retailers of the acquired, such as their (locations, capacity, financial and operational capabilities, and more), could potentially lead to the exploitation of this data being used to limit the growth and expansion of competing companies to the acquired, or being proactive and reacting quickly to any shift in the business model undertaken by any of this company's competitors.

Second: GAC believed that the creation of a dominant and vertically integrated entity in most stages of the supply chain as a result of this transaction would make it more difficult for new competitors or investors to enter the gas supply market. This could make it difficult for the Ministry of Energy to succeed in the near future to open competition in supply chains.

36. Are there any future developments or planned reforms of the merger control regime in your jurisdiction?

Based on the GAC's 2022 Competition Report, it appears that there is direction for a concerted effort towards a cohesive economic unity between companies of the Gulf Cooperation Council ("**GCC**"). Hence, an initial draft law of 29 articles was produced covering the provisions such as these of: General provisions; Competent authority; Practices; Economic concentration; Precautionary measures; Exemption, settlement, reconciliation; Lawsuits and sanctions; Receiving complaints and reports; Final provisions.

Perhaps the GCC as a whole would adopt a final version of this proposed GCC Competition Law at some point in the foreseeable future. This would be a positive step but raises some logistical concerns with respect to implementation. A few questions come to mind, such as,

will there be a shared database between the GCC merger control regulators? Would there be an avenue for global entities that are involved in multiple jurisdictions to file one comprehensive application? How will the filing fees for the multi-jurisdictional applications be handled?

It is hoped for that this law would not only address the economic concerns with respect to unfair competition but would also create an efficient process for parties involved in economic concentrations to quickly file their applications (especially in multi-jurisdictional transactions) and obtain clearances. The number one major issue parties face when attempting to close a multi-jurisdictional transaction is obtaining clearances from the relevant merger control regulators prior to concluding closing. Establishing a GCC Competition Law that creates a streamlined economic concentration application process to clearance would incentivize commercial transactions in the region, thus boosting these economies.

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